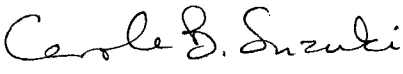


## ANALYSIS

This ordinance grants an electrical transmission franchise to AV Solar Ranch 1, LLC, a Delaware Limited Liability Company ("Franchisee"), to conduct and transmit electricity for a period of thirty (30) years. The base annual fee payable to the County of Los Angeles by Franchisee will be determined according to a formula contained in section 2 of this franchise ordinance. Franchisee has paid a one-time granting fee of five thousand dollars (\$5,000).

ANDREA SHERIDAN ORDIN  
County Counsel

By   
CAROLE B. SUZUKI  
Deputy County Counsel  
Public Works Division

CBS:lm

01/03/11 (requested)  
03/30/11 (revised)

**ORDINANCE NO. \_\_\_\_\_**

An ordinance granting an electrical transmission franchise to AV Solar Ranch 1, LLC, a Delaware Limited Liability Company, for a period of thirty (30) years.

The Board of Supervisors of the County of Los Angeles ordains as follows:

**SECTION 1. Franchise Term, Grant.**

The right, privilege, and franchise is granted to AV Solar Ranch 1, LLC, a Delaware Limited Liability Company ("Franchisee"), and its successors and assigns, for a period of thirty (30) years, beginning on May 26, 2011, the effective date of this franchise, to erect, construct, reconstruct, operate, maintain, renew, repair, change the size of, or remove any electric transmission system consisting of poles, towers, crossarms, conduits, manholes, vaults, cables, wires, transformers, switches, and other equipment, appliances and appurtenances, including communication circuits, for the purpose of conducting and transmitting electricity and electrical energy for light, heat, and power purposes, and for any and all other purposes for which electricity can be used necessary or appropriate solely for the Franchisee's operations ("Franchisee's facilities") on, along, upon, in, under, or across any and all highways as defined in Section 16.36.080 of the Los Angeles County Code now or hereafter dedicated to public use within the unincorporated territory of the County of Los Angeles ("County"), State of California, beginning at approximately seven thousand nine hundred (7,900) feet north of Avenue D on 170th Street West and northerly along 170th Street West to Avenue A (Los Angeles County/Kern County line), as more particularly described in

attached Exhibit A, and as depicted on the exhibit maps attached hereto as Exhibit B ("Franchise Area").

**SECTION 2. Consideration; Payment of Fees.**

A. All fees set forth in this ordinance shall be made payable to the County, c/o Department of Public Works, P.O. Box 1460, Alhambra, California 91803.

B. Granting Fee. As consideration for the franchise granted, the Franchisee shall pay the County a one-time granting fee of five thousand dollars (\$5,000.00) within thirty (30) days after the adoption of this ordinance.

C. Annual Franchise Fee. As additional consideration for the franchise granted, the Franchisee shall pay annually on or before May 26 ("Anniversary Date") of each franchise year, in advance of each franchise year, during the term of the franchise, to the County, in lawful money of the United States, a franchise fee computed annually ("Annual Franchise Fee"). The Annual Franchise Fee shall be calculated based on the County Highway space occupied by Franchisee's facilities at a rate of three dollars (\$3.00) per linear foot subject to annual increases based on the Consumer Price Index for All Urban Consumers pursuant to section 2.D below. For purposes of calculating the Annual Franchise Fee, it is agreed that Franchisee's facilities will occupy eight thousand forty-nine (8,049) linear feet of County Highway. Notwithstanding the foregoing, the Annual Franchise Fee for the first year shall be twenty-four thousand one hundred forty-seven dollars (\$24,147.00).

D. Annual Adjustments Based on Consumer Price Index. Every year this franchise is in full force and effect, the Annual Franchise Fee for the current twelve (12)

month period shall be increased based on changes in the Consumer Price Index for All Urban Consumers for the Los Angeles-Riverside-Orange County, California region, as published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), to determine the Annual Franchise Fee for the next twelve (12) months.

The Annual Franchise Fee shall be calculated by multiplying the then current Annual Franchise Fee by a fraction, the numerator of which shall be the Index for the month ending ninety (90) days prior to the upcoming Anniversary Date ("Current Index") and the denominator shall be the Index for the month ending ninety (90) days prior to the previous Anniversary Date ("Previous Index"). The formula for calculation is shown below:

Current Annual Franchise Fee x [Current Index/Previous index] = New Annual Franchise Fee.

If the described Index is no longer published and a substitute index is adopted by the Bureau of Labor Statistics, then Franchisee and County shall accept such substituted index for future Annual Franchise Fee calculations. If no such government index is offered as a replacement, the County shall, at its sole discretion, determine the indices to use. In no event shall the Annual Franchise Fee be less than the previous year's Annual Franchise Fee.

E. Additional Fees and Assessments. In addition to the foregoing Annual Franchise Fee, the Franchisee shall also pay all applicable County fees and assessments related to construction and operation in the Franchise Area. The Franchisee shall also pay any application fees, administrative fees, processing fees,

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late charges, accrued interest, and penalties required in connection with this franchise. These fees may be charged at the then-current applicable rates.

F. The County reserves the right to change its method of calculating fees and the amount thereof, not more frequently than once every five (5) years, if the Board of Supervisors ("Board") determines after a public hearing that good cause exists for such change, and such change is not in conflict with the laws of the State of California.

G. Late Payments. In the event Franchisee fails to make full payment of any of the payments provided for herein on or before the dates they are due, the Franchisee shall pay a late charge of ten percent (10%) of the amount due, said ten percent (10%) being due thirty (30) days after the date payments are due. The ten percent (10%) has been set by both parties hereto in recognition of the difficulty in affixing actual damages from a breach of said time of performance requirement.

In the event full payment of any rate, payment, or fee, including the ten percent (10%) late charge, is not received within sixty (60) days after the due date, an assessment of interest shall accrue on the unpaid balance at one percent (1%) per month beginning on the sixty-first (61st) day after the due date.

### **SECTION 3. Indemnification and Insurance.**

Franchisee shall meet the following indemnification and insurance requirements:

A. Indemnification. Franchisee shall indemnify, defend, and hold harmless the County and its special districts, elected and appointed officers, employees, and agents ("County's agents") from and against any and all liability and expense, including claims and lawsuits relating to or arising from the County's grant of this franchise and for

injuries or damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage, including property of the Franchisee, pollution liability, defense costs, attorneys fees, and workers' compensation benefits, based upon, arising from, or relating to either: (1) Franchisee's use of the franchise and the operations or the services provided by Franchisee, its employees, agents, servants, receivers, contractors, subcontractors, successors, or assignees ("Franchisee's agents") in connection with this franchise; and/or (2) any acts or omissions of Franchisee, Franchisee's agents, or any person in connection with activities or work conducted or performed pursuant to this franchise. Franchisee shall also indemnify, defend, and hold harmless the County and the County's agents, from and against any and all pollution liability, contamination, or environmental degradation liability, including any and all expenses, claims, and lawsuits for injuries or damages of any nature whatsoever, defense costs, attorneys fees, and workers' compensation benefits, arising from or relating to any threatened, actual, or alleged discharge, dispersal, release, or escape of any substance into or upon any person, thing, or place, including the land, soil, atmosphere, man-made structure, and/or any above or below ground watercourse or body of water, in connection with this franchise. The Franchisee shall not be obligated to indemnify the County and County's agents for liability and expense arising from the active negligence of the County and the County's agents.

B. Insurance. Without limiting Franchisee's indemnification of County or County's agents, Franchisee shall provide and maintain at its own expense, during the term of this franchise, the following programs of insurance. Such programs and

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evidence of insurance shall be satisfactory to the County, and shall be primary to and not contributing with, any other insurance or self-insurance programs maintained by the County.

1. Certificate(s), Declaration Page(s) or other evidence of coverage satisfactory to the County shall be delivered on or before the effective date of this franchise, and on or before the expiration date of each term of insurance, to the County.

Such certificates or other evidence shall:

- a. Specifically identify this franchise ordinance.
- b. Clearly evidence all insurance required in this franchise ordinance.
- c. Contain the express condition that the County is to be given written notice by registered mail at least thirty (30) days in advance of any modification, non-renewal, cancellation, or termination of any program of liability insurance, and at least thirty (30) days in advance of any modification, non-renewal, cancellation, or termination of any program of workers' compensation or other insurance required by this section.
- d. Include a copy of the additional insured endorsement to the liability policies, adding the County and County's agents as insureds for all activities arising from this franchise.
- e. Show the Franchisee's insurance as primary to the County's insurance and self-insurance programs. This may be evidenced by adding a statement to the additional insured endorsement required in subsection (d) stating, "It is further

agreed that the insurance afforded by this policy is primary to any insurance or self-insurance programs maintained by the additional insureds, and the additional insureds' insurance and self-insurance programs are excess and non-contributing to Named Insured's insurance."

2. Insurance is to be provided by an insurance company with an A.M. Best rating of not less than A:VII, unless otherwise approved by the County.

3. The Franchisee agrees to release the County and County's agents and waive its rights of recovery against them under the insurance policies specified in this franchise ordinance.

4. Liability. Such insurance shall be endorsed naming the County and the County's agents as additional insureds, and shall include, but not be limited to:

a. Commercial General Liability insurance written on a commercial general liability form (ISO policy form CG00 01, or its equivalent [including any Umbrella Policy], unless otherwise approved by the County), with limits of not less than five million dollars (\$5,000,000.00) per occurrence, fifteen million dollars (\$15,000,000.00) policy aggregate, and fifteen million dollars (\$15,000,000.00) products/completed operations aggregate.

i. If written on a claims-made form, such insurance shall be endorsed to provide an extended reporting period of not less than two (2) years following termination or cancellation of this franchise.

b. Comprehensive Auto Liability insurance (written on ISO policy form CA 00 01, or its equivalent, unless otherwise approved by the County),



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endorsed for all owned, non-owned, and hired vehicles with a limit of not less than one million dollars (\$1,000,000.00) per occurrence.

c. Environmental Impairment Liability insurance, which insures liability for environmental impairment including cleanup cost endorsed for "Sudden and Accidental" contamination or pollution. Such coverage shall be in an amount and form to meet all applicable state and federal requirements but in no event less than five million dollars (\$5,000,000.00) per occurrence.

i. If written with an annual aggregate limit, the policy limit should be three (3) times the above-required occurrence limit.

ii. If written on a claims-made form, such insurance shall be endorsed to provide an extended reporting period of not less than two (2) years following termination or cancellation of this franchise.

5. Workers' Compensation. A program of workers' compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California. Such policy shall be endorsed to waive subrogation against the County for injury to the Franchisee's employees. In all cases, the above insurance shall include Employers' Liability insurance with coverage of not less than:

- a. Each accident: one million dollars (\$1,000,000.00).
- b. Disease-policy limit: one million dollars (\$1,000,000.00).
- c. Disease-each employee: one million dollars

(\$1,000,000.00).

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C. Franchisee shall furnish the County within thirty (30) days of the adoption of this ordinance, and within thirty (30) days of the expiration date of each term of insurance, with evidence of insurance coverage, as required by section 3.B. to the satisfaction of the County, for each of said policies, certified by the Franchisee's insurance agent, or by the company issuing the policy.

D. The types and amounts of said insurance coverage shall be subject to review and adjustment by the County, at County's sole discretion, at any time during the term of the franchise. In the event of such adjustment, Franchisee agrees to obtain said adjusted insurance coverage, in type(s) and amount(s) as determined by the County, within thirty (30) days after written notice from the County.

E. Failure on the part of Franchisee to procure or maintain the required insurance, or to provide evidence of current insurance, shall constitute a material breach of the terms of this franchise upon which the County may terminate or suspend this franchise.

F. It is the obligation of Franchisee to provide evidence of current insurance policies. No franchise operations shall commence until Franchisee has complied with the provisions of this section 3, and Franchisee shall suspend any operations during any period that Franchisee fails to obtain or maintain the insurance required hereunder.

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#### **SECTION 4. Security/Bond.**

##### **A. Security Requirements/Faithful Performance Bond.**

1. Within one (1) year following the adoption of this ordinance or prior to construction of the Franchisee's facilities within the Franchise Area, whichever occurs first, Franchisee shall provide to the County a faithful performance bond in the sum of not less than seven hundred twenty thousand dollars (\$720,000.00) payable to the County, executed by a corporate surety licensed to transact business as a surety in the State of California, and acceptable to the County. Such bond shall be conditioned upon the faithful performance by the Franchisee of the terms and conditions of this franchise and shall provide that, in case of a breach of any condition of this franchise, the whole amount of the penal sum, or any portion thereof, shall be deemed to be liquidated damages, and shall be payable to the County by the principal and surety(ies) of the bond.

2. Every year this franchise is in full force and effect, the amount of the faithful performance bond for the current twelve (12) month period shall be increased by one and one-half percent (1.5%) on or before the Anniversary Date in advance of the next franchise year.

3. Throughout the term of the franchise, Franchisee shall maintain the faithful performance bond in the amount required herein. Within ten (10) business days after receipt of notice from the County that any amount has been withdrawn from the bond as provided in this section, Franchisee shall restore the bond to the full amount required herein.

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4. The faithful performance bond shall be maintained in full effect for one (1) year following the date of the County's approval of any sale, transfer, assignment, or other change of ownership of the franchise, or following the date of expiration or termination of the franchise. The County may release said bond prior to the end of the one (1) year period upon satisfaction by Franchisee of all the obligations under the franchise.

B. Alternative Security.

1. The County, in its sole discretion, may accept alternative security to meet the above bonding requirements in the form of an irrevocable letter of credit, certificate of deposit, or a cash deposit in the form of a Passbook Savings Account acceptable to County as an alternative to a faithful performance bond to guarantee the performance of Franchisee's obligations under this franchise. Such alternative security shall be made payable to the County and shall be deposited to the satisfaction of the County.

2. The types and amounts of the performance bond or alternative security coverage shall be subject to review and adjustment by the County, at County's sole discretion, at any time during the term of the franchise. In the event of such adjustment, Franchisee agrees to provide the adjusted coverage, in type(s) and amount(s) as determined by the County, within thirty (30) days after written notice from the County.

C. No franchise operations shall commence until Franchisee has complied with the requirements of this section.

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## **SECTION 5. Transfers and Assignments.**

A. Franchisee shall not sell, transfer (including stock transfers), assign, or lease the franchise or any part thereof (each of which is hereinafter referred to as an "assignment"), to any other person or entity ("transferee") except with the written consent of the Director of Public Works or his/her designee and after payment of a transfer fee as detailed in section 5.G. No such consent shall be required for any assignment of the franchise in trust or by way of mortgage, pledge, or hypothecation with all or a part of Franchisee's other property for the purpose of securing any indebtedness of Franchisee. A merger will not be deemed a sale, transfer, assignment or lease of the franchise under this section.

B. Franchisee shall give notice to the County of any pending assignment, except as excluded in section 5.E, and shall provide all documents required by the County as set forth in section 5.F. Consent to any such assignment shall only be refused if the County finds that Franchisee is in noncompliance with the terms and conditions of the franchise and/or that the proposed transferee, as applicable, is lacking in experience and/or financial ability to meet the franchise obligations. Consent shall be conditioned upon the completion of the assignment on the terms and conditions set forth in the assignment documents delivered to County, the assumption by the transferee, as applicable, of all the Franchisee's covenants and obligations under the franchise, and all information provided to the County under section 5.F, below, being true and correct as of completion of the assignment. Upon receipt of such consent from the County, Franchisee may proceed to consummate the assignment.

C. Franchisee shall file with the County within thirty (30) days after the effective date of any assignment a certified copy of the duly executed instrument(s) which officially evidence(s) such assignment. If such duly executed instrument(s) is not filed with the County within thirty (30) days after the effective date of such proposed assignment, or if the conditions to consent by the County have not been met, then the County may notify the Franchisee and the proposed transferee that the assignment is not deemed approved by the County. The County may determine that the assignment has no force or effect or that the franchise is forfeited.

D. As a condition to granting consent to such assignment, the County may impose by ordinance such additional terms and conditions upon this franchise and upon the proposed transferee which the Board deems to be in the public interest. Nothing contained herein shall be construed to grant Franchisee the right to complete an assignment except in the manner aforesaid. This section applies to any assignment, whether by operation of law, by voluntary act of Franchisee, or otherwise.

E. Notwithstanding the foregoing, shareholders, partners, and/or any other person or entity owning an interest in Franchisee may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, divestment, or other change, including a merger, is effected in such a way as to give majority control of Franchisee, to any person or persons, corporation, partnership, or legal entity other than the person or entity with the controlling interest in the Franchisee on the effective date of the franchise

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or the effective date of the last approved assignment, consent thereof shall be required as otherwise provided in this section.

F. Upon notice by Franchisee of any proposed assignment, the proposed transferee shall submit an assignment application to the County, which shall contain at a minimum:

1. Identification of the proposed transferee which indicates the corporate or business entity organization, including the submission of copies of the corporate or business formation papers (e.g., articles of incorporation and by-laws, limited partnership agreements, operating agreements), and the names and addresses of any parent or subsidiary of the proposed transferee(s), or any other business entity owning or controlling the proposed transferee in part or in whole.

2. A current financial statement, which has been audited by a certified public accountant demonstrating conclusively to the satisfaction of the County that the proposed transferee has all the financial resources necessary to carry out all of the terms and conditions of the franchise. The financial statement shall include a balance sheet, profit and loss statement for at least the three (3) most recent years, and a statement of changes in financial position; however, if the proposed transferee has been in existence for less than three (3) years, then for such period of existence.

3. A copy of the proposed agreement of sale, letter of understanding, or other documentation which details the proposed assignment ("assignment documents").

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4. Other information which may be required by the County to assess the capability of the proposed transferee to operate and maintain the franchise.

G. The transfer fee shall be the actual costs to process the proposed assignment application, including any consultant's fees incurred by the County to assist in evaluating the application, but in no event less than two thousand five hundred dollars (\$2,500.00) and referred to as the minimum transfer fee. The minimum transfer fee will be submitted with the proposed assignment application. Additional monies owed shall be due and payable prior to final determination of the request by the County.

**SECTION 6. Relocation of Facilities.**

A. If any of the facilities erected, constructed, installed, or maintained by the Franchisee pursuant to this franchise on, along, upon, over, in, under or across any highway are located in a manner which prevents or interferes with the change of grade, traffic needs, operation, maintenance, improvement, repair, construction, reconstruction, widening, alteration or relocation of the highway, the Franchisee shall relocate any such facility at no expense to the County, within the time required by the County, upon receipt of a written request from the County to do so.

B. If Franchisee neglects or fails to relocate its facilities within the time required by the County, after receipt of any such notice, Franchisee shall be solely responsible for, and shall reimburse the County, city, and other applicable public entities, any and all additional costs or expenses incurred by the County, city, and other applicable public entities, due to, or resulting from, such delay or failure to relocate



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Franchisee's facilities. Failure to remove such facilities may constitute a breach of this franchise in the sole discretion of the County.

C. The County reserves the right for itself, for all cities and public entities which are now or may later be established, to lay, construct, repair, alter, relocate and maintain subsurface or other facilities or improvements of any type or description within the highways over which the franchise is granted. Failure to relocate such facilities within the time required by the County may constitute a breach of this franchise at the sole discretion of the County.

#### **SECTION 7. Removing or Abandoning Facilities.**

A. Removal. Franchisee must remove all of Franchisee's facilities located within the Franchise Area within one hundred eighty (180) days of the expiration or earlier termination of the franchise, and shall restore the Franchise Area to its former state at the time such facilities are removed, as near as may be, so as not to impair its usefulness, unless the County agrees that the facilities can be abandoned in place as set forth in section 7.B below.

B. Abandonment. The County may give the Franchisee permission to abandon, without removing, any facility laid, erected, constructed, operated, or maintained under this franchise.

#### **SECTION 8. Conditions of Franchise Grant; Suspension or Termination Grounds and Procedure.**

A. This franchise is granted upon each and every condition contained in this ordinance, including such conditions contained herein as are incorporated by reference.

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B. Any neglect, failure, or refusal to comply with any of the conditions of this franchise shall constitute grounds for the suspension or termination thereof. The Board, prior to any suspension or termination of the franchise, shall give to the Franchisee not less than thirty (30) days' notice in writing of any default. If the Franchisee does not within the noticed period begin the work of compliance to cure the default, or after such beginning does not prosecute the work with due diligence to cure the default, the Board may hold a hearing, at which the Franchisee shall have the right to appear and be heard, and thereupon the Board may determine whether such conditions are material and essential to the franchise and whether the Franchisee is in default with respect thereto and may declare the franchise suspended or terminated. Notice of the hearing shall be given to the Franchisee by certified mail not less than thirty (30) days before said hearing. The franchise may only be suspended or terminated by the Board after a hearing.

**SECTION 9. Construction, Operation, and Maintenance.**

A. All facilities erected, constructed, laid, operated, or maintained under the provisions of this franchise shall be erected, constructed, laid, operated, or maintained in accordance with and conforming to all the ordinances, codes, rules, and regulations now or hereafter adopted or prescribed by the Board and all applicable local, state and federal laws and regulations.

B. The Franchisee shall not commence any excavation work under the franchise until it has obtained any permits required by Division 1 of Title 16 of the Los Angeles County Code, except in cases of emergency affecting public health, safety

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or welfare, or the preservation of life or property, in which case the Franchisee shall apply for such permit not later than the next business day.

C. The work of erecting, constructing, laying, replacing, repairing, or removing facilities authorized under the provisions of this franchise on, along, upon, in, under, or across any and all highways shall be conducted with as little hindrance as practicable to the use of the highway for purpose of travel; and as soon as the erecting, constructing, laying, replacing, repairing, or removing of any of said facilities is completed, all portions of the highway which have been excavated or otherwise injured thereby shall be placed in as good condition as the same was before erecting, constructing, laying, replacing, repairing or, removing of the facilities, to the satisfaction of the County.

D. The County reserves the right for itself, for all cities and public entities which are now or may be later established, to improve the surface of any highway over which the franchise is granted.

E. If the County constructs or maintains any storm drain, sewer structure, or other facility or improvement under or across any facility of the Franchisee maintained pursuant to this franchise, the Franchisee shall provide, at no expense to the County, such support as shall be reasonably required to support, maintain, and protect Franchisee's facility.

F. If any portion of any highway shall be damaged by reason of defective facilities laid or constructed under the franchise, the Franchisee shall, at its own expense, repair any such defect and put such highway in as good condition as it was

before such damage was incurred, to the satisfaction of the County. If Franchisee neglects or fails to repair such damage after receipt of any such notice, or if such damage constitutes an immediate danger to public health and safety requiring the immediate repair thereof, Franchisee shall be solely responsible for, and shall reimburse the County, city, and other applicable public entities, any and all additional costs or expenses incurred by the County, city, and other applicable public entities, due to, or resulting from, such delay or failure to relocate the facilities.

**SECTION 10. Notices.**

Unless stated otherwise herein, any notices to be given or other documents to be delivered by either party may be delivered in person, by private courier, or deposited in the United States mail to the party for whom intended as follows:

To County: County of Los Angeles Department of Public Works  
P.O. Box 1460  
900 S. Fremont Avenue  
Alhambra, California 91802-1460  
Attention: Survey/Mapping & Property Management Division

AND

Executive Office of the Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

To Franchisee: AV Solar Ranch 1, LLC  
c/o First Solar  
353 Sacramento Street, Suite 2100  
San Francisco, California 94111  
Attention: General Counsel

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With a courtesy copy to: Latham & Watkins  
355 South Grand Avenue  
Los Angeles, California 90071  
Attention: Peter Gutierrez and Beth Gordie

The copy provided to Franchisee's attorneys is a courtesy copy only and is not required to provide sufficient notice to Franchisee pursuant to the terms of this franchise.

**SECTION 11. County Franchises.**

This franchise is granted pursuant to the provisions of Division 3, Franchises, of Title 16, Highways, of the Los Angeles County Code, the provisions of which are incorporated herein by reference, and as Division 3 of Title 16 may be amended hereafter and/or in any successor provisions. In the event the provisions of this franchise conflict with the provisions of Division 3 of Title 16, the provisions herein shall control. Without limiting the generality of the foregoing, Section 16.44.050 of the County Code is superceded by this ordinance.

**SECTION 12. Franchise Operative Date.**

The operative date of this franchise shall be May 26, 2011.

[AVSOLARRANCHFRNCZCC]